HIGH COURT OF UTTARANCHAL AT NAINITAL.

(Chapter VIII Rule 32 (2) (b)
Description of the Case.

Criminal Appeal No. 298 of 2002

Date of Decision : 6th March, 2006

A.F.R. (Approved for reporting)

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~~Not approved for reporting.~~

Date 6.3.2006 Initial of Judge.

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL

AT NAINITAL

Criminal Appeal No. 298 of 2002

Rishi Prakash Agrawal
@ Raju S/o Sri Prem Prakash Agarwal
R/o Mohalla Kazibag, Kashipur
Police Station – Kashipur
District – Udham Singh Nagar …Appellant

Versus

State of Uttaranchal ….Respondent

Sri Dharam Veer Sharma-Sr. Advocate, for the appellant
Sr A. Rab Additional G.A. and Sri Sudhir Kumar and Sri Rajeev Mohan, learned A.G.A. for the State

Hon'ble J.C.S. Rawat, J.

1. The present appeal has been directed against the judgment and order dated 04.10.2002 passed by Sri S.K. Raturi, Sessions Judge, Udham Singh Nagar in Sessions Trial No. 220 of 2001 State Vs. Rishi Prakash Agrawal convicting and sentencing the appellant-accused u/s 304-B I.P.C. to undergo 7 year R.I. and under 498-A I.P.C. to undergo 2 years R.I. and u/s ¾ Dowry Prohibition Act to undergo R.I. of one year.

2. Brief facts leading to the prosecution case are that FIR was lodged by the complainant Vishnu Kumar Agarwal who was the father of the deceased Monika. He has stated in the FIR that on 27.06.1999 the marriage of his daughter Monica was solemnized with Rishi Prakash Agarwal-accused. Shri Prem Prakash Agarwal is the father of the Rishi Prakash Agarwal. The complainant has stated that he had given sufficient dowry at the time of marriage of his daughter-Monica. It was further alleged that after few days of the marriage, the husband and their relatives started harassing Monica for not

bringing sufficient dowry at the time of her marriage. It was further stated that after marriage, they were not earning profit in the business. The appellant and the accused Prem Prakash Agarwal, father of the appellant started the demand of dowry to the deceased and ask her to bring Rs. 5-6 lacs from her parental house and they started harassing the deceased. Whenever the deceased-Monica used to go to her parental house she used to tell that her husband and his relatives are demanding the dowry and she was subjected to cruelty. The complainant also assured the appellant and his father Prem Prakash Agarwal that he would fulfill the demand of dowry within few days. Consequently on 25.10.2000 the complainant received a telephonic message that the deceased-Monika has been subjected to assault. On receiving this information, the complainant and his son immediately came to Kashipur at about 1:00 pm to meet her daughter. When they reached to Kashipur at the house of the deceased, his daughter started weeping and narrated the entire story as to how she was subjected to cruelty. Thereafter the complainant assured them that he would meet the dowry demand soon as required by them within a period of 5-6 days. Thereafter, they left from the house of the deceased. When the father of the deceased reached at Moradabad from the house of the deceased, he was informed by his brother in law that her daughter had been murdered at about 8:00 p.m. on 25.10.2000. On getting this information he called his wife from his native town Billari. Then they reached in the matrimonial house of the deceased at about 12:00 night at Kashipur where they found the body lying on the cot in the first floor and they also noticed some injuries on the person of the deceased. Thereafter FIR was lodged and panchnama was conducted. The postmortem of the deceased was also conducted by the Doctors. The I.O. recorded the statement u/s 161 and collected the evidences and submitted the chargesheet.

3. The charges were framed against the appellant and Prem Prakash Agarwal and they denied the charges and claimed the trial.

4. The prosecution is support of his case adduced the evidence of complainant PW1-Vishnu Kumar Agarwal, PW2-Harpal Singh, PW3-Hansa Dutt Pande, PW4-Subodh Kumar, PW5-Dr. J.K. Goel, PW6- Dr. S.C. Sharma, PW7-Const. Prakash Chandra and PW8-Dependra Nath Choudhary.

5. Thereafter, the statement of the accused-appellant was recorded u/s 313 Cr.P.C.. The appellant denied all the allegations narrated in the evidence and he has stated that the deceased died due to heart attack and as such the death was natural.

6. The appellant had examined DW1-Dr. P.K. Dikshit, DW2-Dr. Anil Kumar and DW3-Survesh Nath. DW1-Dr. P.K. Dikshit is a heart specialist at Kashipur. DW2-Dr. Anil Kumar is attending physician to the deceased and he had also relation with the accused/appellant. DW2-Dr. Anil Kumar had seen him twice and referred to DW1-Dr. P.K. Dikshit for further analysis. DW2-Dr. Anil Kumar had also stated that he had taken ECG which was filed before the trial court. DW3-Survesh Nath is the clerk in N.K.B.M.G. College, Chandosi from where he had brought the applications form containing the signature of deceased submitted at the time of the admission and examination. He produced the said forms before the court below for the purposes of the comparison of writing and signature. It was also alleged that certain letters and cards have been sent by the deceased to her husband / appellant in which she has not complaint anything against her husband/appellant. DW4-Pradeep Kumar Goel is the handwriting expert who had compared admitted signature of the

form submitted by DW-3 Survesh Nath and the alleged letter purported to have been written by the deceased and he has opined that signature appears to be of the same persons who had signed the said examination forms.

7. The learned trial court after appraisal of the evidence on record found the appellant guilty u/s 304-B, 498-A I.P.C. and u/s ¾ Dowry Prohibition Act and convicted and sentenced the appellant as mentioned above. The accused denied the charges and claimed the trial. The accused Prem Prakash Agarwal was not found guilty and he was acquitted.

8. I have heard learned counsel for the parties and perused the record.

9. Now I have to determine as to who is responsible for causing the death of the deceased-Monica. *It is a well-settled principle of law that in order to convict an accused for an offence U/s 304B IPC, the following essentials must be satisfied:-*

(i) The death of a woman must have been caused by burns or bodily injury or otherwise than under normal circumstances

(ii) Such a death must have occurred within seven years of her marriage.

(iii) Soon before her death, the woman must have been subjected to cruelty or harassment by her husband or by relatives of her husband.

(iv) Such cruelty or harassment must be for, or, in connection with demand of dowry.

(v) Such cruelty or harassment is shown to have been meted out to the woman soon before her death.

If the prosecution establishes the ingredients of section 304 B IPC as indicated above then a presumption of dowry death shall be drawn against the appellant u/s 113 B of the Indian Evidence Act. It is to be kept in mind that a presumption u/s 113 B is a presumption of law. Both the sections 304 B and 113 B were inserted by the Dowry Prohibition Amendment Act (No. 43 of 1986) with a view to combat the increasing menace of dowry deaths. Section 113 B reads as follows: -

> *"113 B:- Presumption as to dowry death-When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person caused the dowry death.*
>
> ***Explanation :-** For the purposes of this section 'dowry death' shall have the same meaning as in Section 304 B of the IPC (45 of 1860)"*

10. On proof of essentials mentioned in section 304 B IPC it becomes obligatory on the court to raise a presumption that the accused caused the dowry death. The presumption shall be raised only on proof of the following essentials:-

(1) The question before the court must be whether the accused has committed the dowry death of a woman. (This means that the presumption can be raised only if the accused is being tried for the offence u/s 304 B IPC).

(2) The woman was subjected to cruelty or harassment by her husband or his relatives.

(3) Such cruelty or harassment was for, or in connection with any demand for dowry.

(4) Such cruelty or harassment was soon before her death.

11. A conjoint reading of Section 113 B of the Evidence Act and section 304 B IPC shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. Prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of the 'death occurring otherwise than in normal circumstances'. The expression 'soon before' is very relevant where section 113 B of the Evidence Act and section 304 B IPC are pressed into service. Prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and only in that case presumption operates. Evidence in that regard has to be led by prosecution.

12. Soon before' is a relative term and it would depend upon circumstances of each case and no strait-jacket formula can be laid down as to what would constitute a period of soon before the occurrence. It would be hazardous to indicate any fixed period, and that brings in the importance of a proximity test both for the proof of an offence of dowry death as well as for raising a presumption u/s 113 B of the Evidence Act. The expression 'soon before her death' used in 304 B IPC and section 113 B of the Evidence Act is present with the idea of proximity test. No definite period has been indicated and the expression 'soon before' is not defined. The determination of the period which can some within the term 'soon before' is left to be determined by the courts, depending upon facts and circumstances of each case. Suffice, however, to indicate that the expression 'soon before' would normally imply that the interval should not be much between the concerned cruelty or harassment and the

death in question. There must be existence of a proximate and live-link between the effect of cruelty based on dowry demand and the concerned death. If alleged incident of cruelty is remote in time and has become stale enough not to disturb mental equilibrium of the woman concerned, it would be of no consequence.

13. The word 'cruelty' used u/s 304 B IPC is not defined under that section. Section 498 A IPC makes cruelty by husband to the wife as a punishable offence. The word 'cruelty' has been defined in explanation appended to the said section. Section 498 A IPC with the explanation there under reads as follows:-

> *"498 A- Husband or relative of husband of a woman subjecting her to cruelty –Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.*

Explanation: - *For the purpose of the section 'cruelty' means-*

(a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury to danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

14. At the outset, I would like to mention that it is admitted to both the parties that the marriage took place on 22.06.1999 and the death was caused within 7 years of the marriage.

15. Now it is to be decided whether the death was unnatural. PW1- Vishnu Kumar Agarwal is the father of the deceased-Monica and he lodged the report. He had stated in his evidence that the deceased used to come to her matrimonial house and always complained that the appellant-husband and Prem Prakash Agarwal-Father-in-Law had been demanding dowry and she was subjected to the cruelty and harassment. PW1-Vishnu Kumar has narrated the entire story as indicated in para-2 of my judgment. PW2-Harpal Singh is also witness who had deposed the fact that the deceases was subjected to cruelty immediately before the death on account of dowry. He had further stated whenever deceased come to her matrimonial house, she met her and she complained to him that the appellant and his in laws were demanding a sum of Rupees 4-5 lacs on dowry and they were also subjecting her with cruelty in connection with it. This witness also belong to the village Billary where the parents of deceased resides. PW3-Hansa Dutt Pande is the Tehsildar who had conducted the panchnama. PW4-Subodh Kumar is the brother-in-law of PW1-Vishnu Kumar Agarwal and he is the maternal uncle of the deceased. He went to his brother in law's home at Billari after the marriage of the deceased. When she was there she told him that the appellant and her in laws were demanding a sum of 4 or 5 lacs in dowry and they humiliate and harass her in this connection. She also stated that if this demand is not fulfilled they can go to any extent to leave her. On hearing such things, he told his brother-in-law Vishnu Kumar Agarwal to assure the appellant and their in-laws that he would fulfill their demand. PW5-Dr. J.K. Goel is the doctor who has conducted the postmortem. PW6-Dr. S.C. Sharma is from the Deptt. Of Chemical Examiner, Agra. He has taken the viscera for test. PW7-Prakash Chandra is the formal witness. PW8-Dependra Nath Choudhary is the investigating officer. According to the prosecution the deceased was subjected to cruelty and

thereafter she died unnatural death. It was also pointed out that there were certain injuries on the person of the deceased. It was further pointed out that viscera was preserved and it was sent to the chemical examiner. It is revealed from the viscera report Ex-Ka-9 that there was ammonia insecticide poison in viscera. The prosecution had adduced the evidence of PW6-Dr. S.C. Sharma a Scientist in the chemical examiner department and he conducted the analysis of the said viscera and found the poison in the viscera and proved his report Ex.Ka.9. On the contrary it was pointed out by the appellant that the death was natural and she died about 8:00 p.m. due to heart attack. The defence has also adduced the evidence of Dr. P.K. Dikshit-DW1 and Dr. Anil Kumar-DW2. The prosecution had also adduced the evidence of Dr. J.K. Goel-PW5 who had conducted the postmortem. Dr. J.K. Goel-PW5 had stated in his evidence that there were following ante mortem injuries on the person of the deceased:-

1. Abraded contusion 2 cm x 1 cm over left side mandibular region 4 cm. away from the chin towards left ear.
2. Abraded contusion 1.5 cm x 1 cm. on inner side of right forearm 5 cm above from right wrist joint.

16. According to the post mortem report the cause of the death could not be ascertained. Viscera was preserved and it was sent to the chemical examiner. It was also opined by the Doctor that the death would have been occurred at about 8:00 pm. on 25.10.2000. The viscera was examined by Dr. S.C.Sharma-PW6 who is Scientific Officer, Forensic Lab, Agra. He has opined that there was insecticide poison in the viscera. The evidence of PW5-Dr. J.K. Goel and PW6-Dr. S.C. Sharma are credible and cogent and nothing can be elicited from their cross examination. The defence adduced the evidence of Dr. P.K. Dikshit-DW1 who had stated that the deceased was

examined by him on 02.07.2000 and 12.08.2000 and he opined that she was suffering from heart decease and he also filed Ex. Kha-9 and Kha-10 which were said to be the prescription for the treatment. DW2-Dr. Anil Kumar has also examined the decease on 06.07.2000 and 08.09.2000 and he also proved the prescriptions Kha-9 to Kha-14. He had also stated that during her treatment, he conducted the ECG test and referred her to DW1-Dr. P.K. Dikshit, cardiologist for her treatment. He also stated in his evidence that on the date when she died he was called and when he reached at the residence of the deceased she was found dead. The evidence is assailed on the ground that DW1-Dr. P.K. Dikshit is the interested witness and he is related to the accused. It was pointed out by the appellant that the deceased was suffering from the heart ailment and she was examined by heart specialist. In both the prescription, certain tests have been advised and no such reports after the test had been filed before the court. If the deceased would have been suffering any serious ailment, the doctor would have advised the lupid profile of the blood. If any heart ailment was suspected to the deceased, she would have asked the husband to carry out the test for heart decease in any heart institute. In this case no such test had been carried out to find out the heard ailment. It is admitted that DW2-Dr. Anil Kumar is related to the appellant. If she was having the heart ailment, she must have been referred to higher institute for better treatment. In this case the patient was not referred for the test and no report of the pathological or cardio test had been filed before this court. Dr. P.K. Dikshit-DW1 and Dr. Anil Kumar-DW2 had come to the conclusion without any test as indicated above that she was having heart ailments. The evidence of Dr. P.K. Dikshit-DW1 and Dr. Anil Kumar-DW2 is not credible and cogent. On the contrary the evidence of PW6-Dr.S.C. Sharma and PW5-J.K. Goel is credible and cogent. Therefore, I am in completely in agreement with the findings of the trial court that the death was

unnatural and as such the ingredient No. 2 of 304-B has been proved in this case.

17. Now I have to examine the evidence as to whether the ingredient Nos. 3 and 4 of Section 304-B as stated above had been proved by the prosecution against the appellant. The prosecution has adduced the evidence of PW1-Vishnu Kumar Agarwal who had stated as indicated in para 2 of my judgment. He had also stated on the date when the deceased died he got information in the morning that appellant had committed marpeet with her and the appellant and in laws were demanding the money and the deceased-Monica was subjected to the cruelty. On the same day at about 8:00 p.m. she died. PW1-Vishnu Kumar Agarwal had also stated in his evidence that immediately after receiving the information, he came to the house of the deceased and he assured the appellant and in laws that he would meet the demand of dowry within 4-5 days. PW2-Harpal Singh is an independent witness and he had stated in his evidence that whenever the deceased used to come to her parental house she used to meet him and she always stated that her husband and in laws were demanding the money and they are harassing her. The prosecution in support of case produced PW4-Subodh Kumar who had stated that immediately before the death she was subjected to the cruelty on account of dowry. The detail of his evidence has been narrated in preceding para. All the prosecution witnesses had stated that she was subjected to the cruelty soon before the death. Nothing could be elicited during their cross examination by the appellant. The evidence of the witnesses are credible and cogent.

18. It was concluded that the deceased was not treated cruelly and she had been living happily and peacefully. The appellant had adduced the evidence of different photographs

Ex.Kha.-1 to 7. The appellant wanted to show that they were living happily.

19. The appellant had also adduced the evidence of Dr. Survesh Nath-DW3 who was the Superintendent of N.K.B.M.G. College, Chandosi. He had stated in his evidence before the court below that he had brought the admission form of B.A. 3rd Year and M.A. 1st year of the deceased alongwith him which had been filled up by the deceased. These papers bearing No. 20 Kha and 21 Kha contained the signature of the deceased. The appellant also adduced the evidence Pradeep Kumar Goel-DW4 who was the hand writing expert. He appeared before the court below and he had compared the signature of the hand writing of the deceased with the alleged admitted signature containing in paper No. 20 Kha and 21 Kha. He has further opined that the greeting cards and the letter (37 Kha/8 and 37 Kha/12) bears the signature of the deceased. Letter No. 37 Kha/8 has been purported to have been written by the deceased to her husband but this letter does not contain any date. 37 Kha/8 to 37 Kha/12 are the greeting cards sent by the deceased to the appellant. These cards does not bear any year or date to which they belonged. It is very much in the evidence that the parties had good relation for some time after the marriage and the letters indicated above itself show that these letters were written immediately after the solemnization of the marriage. The prosecution had led the evidence that the deceased remained in the matrimonial house happily for some time and thereafter the appellant and in laws started to harass her. Thus these letters did not support the appellant.

20. In view of the above discussion, I am of the view that the prosecution had proved the case beyond reasonable doubt against the appellant. I am completely in agreement with the findings recorded by the learned trial court. It was pointed out

by Shri Dharam Veer Sharma-Sr. Advocate for the appellant that the appellant had served the sentence of seven years and he had been released from jail. When the record of this case will be received by the Sessions Judge or the Chief Judicial Magistrate for the compliance, the court below will first ascertain from Jail as to whether the appellant had served the sentence. If the court comes to the conclusion that the accused had served the sentence in this appeal, no warrant will be issued against the appellant for his arrest.

21. In view of the forgoing discussion, I am of the view that the appeal is devoid of merit is liable to be dismissed and the same is accordingly dismissed.

22. Let the lower court record be sent back to the court concerned for compliance.

(J.C.S. RAWAT, J.

6th March, 2006
Shiv